

### Subpart B—Mutual Holding Companies

#### § 239.3 Mutual holding company reorganizations.

(a) A mutual savings association may not reorganize to become a mutual holding company, or join in a mutual holding company reorganization as an acquiree association, unless it satisfies the following conditions:

(1) A Reorganization Plan is approved by a majority of the board of directors of the reorganizing association and any acquiree association;

(2) A Reorganization Notice is filed with the Board pursuant to § 238.14 of this chapter;

(3) The Reorganization Plan is submitted to the members of the reorganizing association and any acquiree association pursuant to and is approved by a majority of the total votes of the members of each association eligible to be cast at a meeting held at the call of each association's directors in accordance with the procedures prescribed by each association's charter and bylaws; and

(4) All necessary regulatory approvals have been obtained and all conditions imposed by the Board have been satisfied.

(b) Upon receipt of an application under this section, the Reserve Bank will promptly furnish notice and a copy of the Reorganization Plan to the primary federal supervisor of any savings association involved in the transaction. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

#### § 239.4 Grounds for disapproval of reorganizations.

(a) *Basic standards.* The Board may disapprove a proposed mutual holding company reorganization filed pursuant to § 239.3(a) if:

(1) Disapproval is necessary to prevent unsafe or unsound practices;

(2) The financial or managerial resources of the reorganizing association or any acquiree association warrant disapproval;

(3) The proposed capitalization of the mutual holding company fails to meet

the requirements of paragraph (b) of this section;

(4) A stock issuance is proposed in connection with the reorganization pursuant to § 239.24 that fails to meet the standards established by that section;

(5) The reorganizing association or any acquiree association fails to furnish the information required to be included in the Reorganization Notice or any other information requested by the Board in connection with the proposed reorganization; or

(6) The proposed reorganization would violate any provision of law, including (without limitation) § 239.3(a) and (c) (regarding board of directors and membership approval) or § 239.5(a) (regarding continuity of membership rights).

(b) *Capitalization.* (1) The Board shall disapprove a proposal by a reorganizing association or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting association or the acquiree association would fail to be "adequately capitalized" under the regulatory capital requirements applicable to the savings association.

(2) Proposals by reorganizing associations and acquiree associations to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or written policies of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, governing capital distributions by savings associations in effect at the time of the reorganization.

(c) *Presumptive disqualifiers.*—(1) *Managerial resources.* The factors specified in § 238.15(d)(1)(i) through (vi) of this chapter shall give rise to a rebuttable presumption that the managerial resources test of paragraph (a)(2) of this section is not met. For this purpose, each place the term *acquiror* appears in § 238.15(d)(1)(i) through (vi) of this chapter, it shall be read to mean the reorganizing association or any acquiree association, and the reference in § 238.15(d)(1)(v) of this chapter to filings

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under this part shall be deemed to include filings under either part 238 of this chapter or this part.

(2) *Safety and soundness and financial resources.* Failure by a reorganizing association and any acquiree association to submit a business plan in connection with a Reorganization Notice, or submission of a business plan that projects activities that are inconsistent with the credit and lending needs of the reorganizing association or acquiree association's proposed market area or that fails to demonstrate that the capital of the mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of paragraphs (a)(1) and (a)(2) of this section are not met.

(d) *Failure of the Board to act on a Reorganization Notice within the prescribed time period.* A proposed reorganization that obtains regulatory clearance from the Board due to the operation of § 238.14 of this chapter may take place in the manner proposed, subject to the following conditions:

(1) The reorganization shall be consummated within one year of the date of the expiration of the Board's review period under § 238.14 of this chapter;

(2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under § 239.4(b);

(3) No request for regulatory waivers or forbearances shall be deemed granted;

(4) The following information shall be submitted within the specified time frames:

(i) On the business day prior to the date of the reorganization, the chief financial officers of the reorganizing association and any acquiree association shall certify to the Board in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of their respective associations since the date of the financial statements submitted with the Reorganization Notice;

(ii) No later than thirty days after the reorganization, the mutual holding company shall file with the Board a certification by legal counsel stating

the effective date of the reorganization, the exact number of shares of stock of the resulting association and any acquiree association acquired by the mutual holding company and by any other persons, and that the reorganization has been consummated in accordance with § 239.3 and all other applicable laws and regulations and the Reorganization Notice;

(iii) No later than thirty days after the reorganization, the mutual holding company shall file with the Board an opinion from its independent auditors certifying that the reorganization was consummated in accordance with generally accepted accounting principles; and

(iv) No later than thirty days after the reorganization, the mutual holding company shall file with the Board a certification stating that the mutual holding company will not deviate materially, or cause its subsidiary savings associations to deviate materially, from the business plan submitted in connection with the Reorganization Notice, unless prior written approval from the Board is obtained.

### § 239.5 Membership rights.

(a) *Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual form when acquired.* The charter of a mutual holding company must:

(1) Confer upon existing and future depositors of the resulting association the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the reorganizing association as in effect immediately prior to the reorganization;

(2) Confer upon existing and future depositors of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the acquired association immediately prior to acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the depositors of the acquired association shall receive the